
OLR Bill Analysis

sHB 5215

AN ACT CONCERNING ADOPTION OF THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT.

SUMMARY:

This bill enacts the Uniform Power of Attorney Act and repeals current law governing powers of attorney (POA), including a statutory form for a POA, a list of powers the principal can grant an agent in different subjects, and provisions terminating a POA when a conservator of the estate is appointed for a principal who can no longer manage his or her own affairs. Current law allows a principal to grant an agent authority over various subjects such as real estate, stocks and bonds, banking transactions, litigation, and personal relationships.

POAs are documents used by a person (the principal) to designate someone (the agent) to make decisions and act on the principal's behalf. POAs generally name the agent and the powers granted to him or her.

Compared to current law, the bill, among other things:

1. more extensively covers agents' authority, duties, and liabilities;
2. allows a principal to grant an agent authority over more subjects, with more specific powers for agents described under each subject than under current law;
3. makes a POA created under its provisions durable, meaning its effectiveness continues when the principal becomes incapacitated, unless the POA expressly states otherwise (§ 4);
4. allows an agent to continue to exercise powers under a POA after a probate court appoints a conservator, unless the court changes or terminates the agent's authority;

5. authorizes certain people to petition the probate court to review a POA or an agent's conduct;
6. requires people to accept POAs in most circumstances, allows people to request information about them, and limits when people can refuse to accept POAs; and
7. provides sample POA forms to implement the bill's provisions (§§ 41-42).

The bill gives the probate court power to construe POAs, require agents to account to the court about estates under their control, and provide relief (§ 46).

The bill's provisions generally apply to (1) POAs regardless of when they were created, (2) judicial proceedings about a POA commenced on or after October 1, 2014, and (3) judicial proceedings commenced before that date unless the court finds that applying one of the bill's provisions substantially interferes with the proceeding or prejudices a party's rights. The bill does not affect an act by an agent under a POA before October 1, 2014 (§ 45).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014

§ 3 — APPLICABILITY

The bill applies to all POAs except a:

1. POA to the extent it is coupled with an interest in the subject of the power, including a power given to or for a creditor's benefit in a credit transaction;
2. POA to make health care decisions;
3. proxy or other delegation of voting or management rights relating to an entity; or
4. POA created on a government form for a governmental

purpose.

§§ 5-7 — VALIDITY OF POA

Under the bill, a POA executed in Connecticut before October 1, 2014 is valid if it complied with the legal requirements in place at the time of its execution. A POA executed on or after that date is valid if:

1. the principal or someone he or she directs signs the principal's name and
2. two people witness it.

Signatures by someone other than the principal must take place in the principal's conscious presence. A signature is presumed genuine if the principal acknowledges it before a person authorized to take acknowledgements, such as a notary.

The bill makes an out-of-state POA valid in Connecticut if, at the time of execution, it complied with the requirements of (1) the jurisdiction where it was created, (2) the jurisdiction indicated in the POA, or (3) federal law if it is a military POA. Under the bill, the law of the jurisdiction where the POA was created or the jurisdiction indicated in the bill determines a POA's meaning and effect.

The bill gives a photocopy or electronic copy of the original POA the same effect as the original unless another statute or the POA provides otherwise.

§§ 8 & 49 — CONSERVATORS

The bill allows a principal to nominate a conservator of the estate or person in a POA. By law, a probate court can appoint a (1) conservator of the estate for someone who is incapable of managing his or her affairs and (2) conservator of the person for someone who is incapable of caring for himself or herself.

If the principal is the subject of a protective proceeding after executing the POA, the bill requires the court to appoint the person most recently nominated as conservator in a POA unless (1) the person

is unwilling or unable to serve or (2) substantial evidence shows he or she should be disqualified.

Under the bill, a POA does not terminate if a court appoints a conservator of the estate or other fiduciary after the principal executed a POA. Instead, the agent is accountable to both the fiduciary and principal.

§ 9 — WHEN POA BECOMES EFFECTIVE

Under the bill, a POA is effective when it is executed unless the POA specifies otherwise.

The principal may, in any POA effective based on a future event or contingency, authorize someone to determine in a record that the event or contingency has occurred. If the contingency is the principal's incapacity and the POA does not designate anyone to determine the principal's incapacity or the authorized person is unable or unwilling to do so, the bill requires the determination in a record from:

1. a physician, who states that the principal has a mental, emotional, or physical condition that makes him or her unable to receive and evaluate information or make or communicate decisions or
2. an attorney, a judge, or an appropriate government official, who states that the principal is missing, detained (including incarcerated), or outside the United States and unable to return.

The bill authorizes a person chosen to determine incapacity in a POA to act as the principal's personal representative under the federal Health Insurance Portability and Accountability Act (HIPAA) and regulations to access health care information and communicate with health care providers.

The bill provides a sample affidavit form if the POA authorizes someone to determine that an event or contingency occurred.

§§ 10-11 — TERMINATING A POA OR AN AGENT'S AUTHORITY

POA

A POA terminates when the:

1. principal dies;
2. principal becomes incapacitated if the POA is not durable;
3. principal revokes it;
4. POA states that it terminates;
5. POA's purpose is accomplished;
6. principal revokes the agent's authority or the agent dies, is incapacitated, or resigns and the POA does not provide for another agent; or
7. court decides to terminate the POA in connection with a conservatorship proceeding.

A principal's execution of a subsequent POA does not revoke a previous one unless the new one specifies that it does or states that it revokes all previous POAs.

Agent's Authority

Unless the POA provides otherwise, an agent may exercise his or her authority until the authority terminates regardless of the amount of time since executing the POA.

The bill terminates an agent's authority when the:

1. principal revokes the authority;
2. court appoints a conservator and chooses to terminate the agent's authority;
3. agent dies, resigns, or becomes incapacitated;
4. agent is the principal's spouse and an action is filed to dissolve or annul the agent's marriage to the principal or they are legally

separated (the POA can provide that this provision does not apply); or

5. POA terminates.

Unless the POA provides otherwise, an agent is incapacitated when there is a determination in a record that the agent:

1. has a mental, emotional, or physical condition that makes him or her unable to receive and evaluate information or make or communicate decisions, from a (a) judge in a court proceeding, (b) physician, or (c) successor agent if the primary agent refuses to be examined by a physician or execute a release of medical information or
2. is missing, detained (including in prison), outside the U.S. and unable to return, from an attorney, judge, or appropriate government official.

Binding Actions After Termination

The principal and his or her successors are bound by an agent's actions after an agent's authority or the POA terminates when the agent or other person does not know of the termination and acts in good faith under the POA. This also applies when a POA that is not durable terminates due to the principal's incapacity. But a principal is not bound by acts that are otherwise invalid or unenforceable.

§§ 11-18 & 47 — AGENTS

§ 11 — Coagents and Successor Agents

A POA may designate two or more coagents who can exercise their authority independently, unless the POA provides otherwise.

The POA can also designate successor agents to replace an agent who resigns, dies, is incapacitated, is unqualified, or declines to serve. The POA can grant authority to designate successor agents to (1) an agent or (2) a person designated by name, office, or function. Unless the POA provides otherwise, a successor agent has the same authority as the original agent and cannot act until there are no predecessor

agents.

§ 12 — Compensation

Unless the POA provides otherwise, an agent is entitled to (1) reimbursement for expenses reasonably incurred on the principal's behalf and (2) reasonable compensation under the circumstances.

§ 13 — Accepting Appointments

Unless the POA provides otherwise, a person accepts an appointment as agent if he or she uses the agent's authority, performs the agent's duties, or takes other actions indicating acceptance.

§ 14 — Duties

Regardless of the provisions of the POA, an agent who accepts an appointment must act:

1. according to the principal's reasonable expectations if actually known and otherwise in the principal's best interest,
2. in good faith, and
3. within the authority granted by the POA.

The bill sets additional rules for agents but allows the POA to alter these provisions. Unless the POA provides otherwise, the agent must:

1. act loyally for the principal's benefit;
2. avoid conflicts of interest that impair the agent's ability to act impartially in the principal's best interest;
3. act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
4. keep records of receipts, disbursements, and transactions made on the principal's behalf;
5. cooperate with someone who has authority to make the principal's health care decisions to carry out the principal's reasonable expectations if actually known and otherwise act in

the principal's best interest; and

6. attempt to preserve the principal's estate plan if the agent actually knows about it and it is consistent with the principal's best interest based on all relevant factors.

For actions regarding the principal's estate, the agent must consider factors including (1) the property's value and nature; (2) the principal's foreseeable obligations and need for maintenance; (3) minimizing taxes; and (4) eligibility for federal or state benefits, programs, or assistance.

§§ 11, 14-15 & 17 — Liability

Protections. The bill protects an agent from liability under certain circumstances. Specifically, he or she is not liable:

1. to beneficiaries of an estate plan for failing to preserve the plan if he or she acts in good faith;
2. solely because he or she also benefits from an act or has an interest or conflict about the principal's property or affairs if the agent acts with care, competence, and diligence for the principal's best interest;
3. if the principal's property declines in value unless the agent breached a duty;
4. for the acts, errors, or defaults of someone to whom he or she delegates his or her authority or engages on the principal's behalf, if the agent selected and monitored the person using care, competence, and diligence; and
5. for the actions of another agent if he or she did not participate in or conceal the other agent's breach of fiduciary duty, unless the POA provides otherwise. An agent with knowledge of a breach or an imminent breach must notify the principal and take reasonable steps to safeguard an incapacitated principal's interests. An agent who fails to take these actions is liable for

reasonably foreseeable damages that could have been avoided by taking the required action.

Special Skills. When determining whether an agent acted appropriately under the circumstances, the bill requires considering an agent's special skills or expertise if he or she was selected as agent because of them or in reliance on the agent's representations about them.

Waiving Liability. The bill makes binding a POA provision relieving an agent of liability for breaching a duty unless it:

1. relates to a breach involving dishonesty, improper motives, or reckless indifference to the POA's purpose or the principal's best interest or
2. was included because of an abuse of a confidential or fiduciary relationship with the principal.

Liability to Principal and Successors. An agent who violates the bill's provisions is liable to the principal or his or her successors in interest for:

1. an amount required to restore the value of the principal's property to what it would have been if the violation did not occur and
2. reasonable attorney's fees and costs paid on the agent's behalf.

§ 14(h) — Disclosing Certain Records

Unless the POA provides otherwise, an agent is not required to disclose receipts, disbursements, or transactions unless ordered by a court or requested by:

1. the principal;
2. a guardian, conservator, or other fiduciary acting for the principal;

3. a government agency with authority to protect the principal's welfare; or
4. the personal representative or successor in interest of the principal's estate after the principal's death.

An agent must (1) comply with a request for these documents within 30 days or (2) explain in a record why he or she needs additional time and comply within 30 days of providing the record.

§ 18 — Resignation

Unless the POA provides a different method, an agent may resign by notifying the principal. If the principal is incapacitated, the agent must notify:

1. any appointed guardian or conservator of the estate or person and any coagent or successor agent or
2. if none of the above exist, someone reasonably believed to have sufficient interest in the principal's welfare or a government agency with authority to protect the principal's welfare.

§§ 16 & 47 — PETITIONING PROBATE COURT TO REVIEW POA OR AGENT'S CONDUCT

The following people may petition the probate court to construe a POA or review an agent's conduct:

1. the principal or agent;
2. a guardian, conservator, or other fiduciary acting for the principal;
3. a person authorized to make the principal's health care decisions;
4. the principal's spouse, parent, descendant, or caregiver;
5. an individual who (a) would qualify as the principal's presumptive heir or (b) demonstrates sufficient interest in the principal's welfare;

6. a person named as a beneficiary to receive property, a benefit, or a contractual right when the principal dies or a trust beneficiary with an interest in the principal's estate;
7. a government agency with authority to protect the principal's welfare; or
8. a person asked to accept the POA.

The person must apply to the probate court in the district (1) where the agent has a place of business; (2) where the agent or principal resides; or (3) if the principal is deceased, with jurisdiction over the estate or where the principal resided immediately before death.

The bill requires the probate court to grant the petition if it is filed by the principal, agent, guardian, conservator, or other fiduciary. It may grant it for any of the people listed above if (1) the petitioner has sufficient interest to be entitled to relief, (2) there is cause shown for the relief requested, and (3) the petition is not intended to harass. The court must dismiss a petition on the principal's motion unless he or she is incapacitated.

§§ 19-20 — ACCEPTING A POA

Acknowledged POA

A person who in good faith accepts an acknowledged POA may rely on the bill's presumption that the signature on the POA is genuine (see § 5), as long as the person accepting the POA does not know that the signature on a POA is not genuine. Such a person can rely on the POA if he or she does not know that the (1) POA or the agent's authority is void, invalid, or terminated or (2) agent is exceeding or improperly exercising his or her authority.

Requesting Information

A person asked to accept an acknowledged POA may request and rely on:

1. an agent's certification under penalty of perjury of any fact concerning the principal, agent, or POA;

2. an English translation of any part of the POA in another language; and
3. counsel's opinion regarding any legal matter involving the POA if the reason for the request is put in a record.

The principal must pay the expense of a translation or opinion if the request for one is made within seven days of presenting the POA for acceptance.

Actual Knowledge of Facts Relating to the POA

A person or business entity that conducts activities through employees does not have actual knowledge of a fact if the:

1. person or entity has commercially reasonable standards to communicate information about POAs and
2. employee conducting the transaction involving the POA follows the standards and does not know the fact.

Accepting a POA

A person must either accept an acknowledged POA or request information as described above within seven business days of being presented with the POA. If information is requested, the person must accept the POA within five business days of receiving the response.

No one may require an additional or different POA regarding the same authority in a presented POA.

Refusing a POA

A person may refuse to accept an acknowledged POA if he or she:

1. is not required to engage in a transaction with the principal or doing so with the principal or agent is inconsistent with state or federal law;
2. has actual knowledge that the agent's authority or the POA terminated;

3. requested information as described above and the request was refused;
4. has a good faith belief the POA is invalid or the agent lacks authority regarding a particular act, whether or not the person requests or receives additional information through the process described above; or
5. makes or knows someone else has made a report to the Department of Social Services' Bureau of Aging with a good faith belief that the principal is subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or someone connected to the agent.

But a probate court or the Superior Court can require a person who refuses to accept an acknowledged POA in violation of the bill to accept it and the person is liable for reasonable attorneys' fees and costs for a proceeding to confirm the POA's validity and mandate its acceptance.

§§ 24-40 — AGENT'S POWERS

An agent may do the following if the POA expressly grants authority and exercising the authority is not prohibited by another agreement or instrument to which the authority or property is subject:

1. create, change, or terminate an inter vivos trust (one created and effective during a person's lifetime);
2. make a gift;
3. create or change survivorship rights or a beneficiary designation;
4. delegate authority under the POA;
5. waive the principal's right to be a beneficiary of a joint and survivor annuity;
6. exercise fiduciary powers that the principal can delegate; or

7. disclaim property.

An agent who is not the principal's ancestor, spouse, or descendant may not create an interest in the principal's property in the agent or someone the agent is legally obligated to support. But the bill allows the POA to specify otherwise.

The bill provides that:

1. When authorities granted an agent are similar and overlap, the broadest authority controls.
2. An agent can exercise authority over property the principal has when executing the POA or that is acquired later regardless of which state it is in or whether the POA is executed in Connecticut.
3. An agent's act under a POA binds the principal and his or her successors as if the principal performed the act.

§§ 24-26 — *Incorporating Powers in a POA*

A POA granting an agent authority to do all the acts the principal could do gives the agent the general authority to perform all the functions for all of the subjects listed below (see Table 1). But a grant of authority regarding gifts is subject to the bill's provisions unless the POA provides otherwise.

The bill gives an agent all of the authority described above and in Table 1 below if the POA refers to general authority and uses the descriptive terms for the subjects in Table 1 or cites the relevant sections of the bill for those subjects. Such a reference regarding a subject incorporates all of the provisions regarding that subject. The bill allows a principal to modify an authority incorporated by reference.

The bill provides that a POA incorporating the subjects listed in Table 1 by reference or granting an agent authority to do all the acts that the principal could do authorizes the agent, for each subject, to

take a number of actions such as:

1. demanding money the principal is entitled to,
2. entering and changing contracts,
3. executing documents,
4. seeking court or government assistance,
5. paying professionals such as lawyers and advisors,
6. communicating with government officials,
7. accessing the principal's communications, and
8. doing other lawful acts.

But the bill allows the POA to provide otherwise.

§§ 27-40 — Granting Authority by Subject

The bill describes the specific actions an agent can perform when language in a POA grants an agent general authority over a subject. But the bill allows a POA to provide otherwise. Table 1 lists each subject covered by the bill and provides examples of the authority the bill gives to an agent under each subject.

Table 1: Agent's Powers Authorized by the Bill, by Subject

Subject (§)	Examples of Agent's Specific Authority Regarding the Subject
Real property (§ 27)	Selling and making certain other transfers of the property, applying for government permits, mortgaging the property and taking other credit-related actions, and using or altering structures
Tangible personal property (§ 28)	Selling and making certain other transfers of the property, granting security interests, and managing the property
Stocks and bonds (§ 29)	Buying and selling stocks and bonds, changing accounts related to them, using them to borrow money, and exercising voting rights
Commodities and options (§ 30)	Buying and selling commodities and options and changing accounts related to them
Banks and financial institutions (§ 31)	Making changes to accounts or contracting for services with these institutions, using safe deposit boxes, borrowing money, and using checks
Operating an entity or	Subject to a document or agreement governing an entity or ownership

business (§ 32)	interests: operating or making changes to ownership interests, performing duties or discharging liabilities, exercising rights, taking certain actions when the principal is the sole owner, adding capital to the entity, and taking part in certain transactions
Insurance and annuities (§ 33)	Paying premiums and making changes to insurance contracts and annuities, acquiring loans based on an insurance or annuity contract, exercising elections and investment powers, determining payments from insurance contracts or annuities, and paying related taxes
Estates, trusts, and other beneficial interests (§ 34)	Accepting and disposing of payments from a trust, estate, or beneficial interest; exercising a power of appointment; and transferring securities to the trustee of a revocable trust
Claims and litigation (§ 35)	Asserting claims before courts and administrative agencies, seeking relief and satisfying judgments, accepting service of process, acting for the principal in bankruptcy proceedings, paying judgments, and settling claims
Personal and family maintenance (§ 36)	Acting to maintain the customary standard of living and providing living quarters for the principal and certain others, making support payments required by law or agreement, paying health care expenses, and providing for transportation and other needs and expenses
Benefits from government programs and civil and military service (§ 37)	Making changes regarding the principal's enrollment in benefit programs, making benefit claims, and receiving claim proceeds
Retirement plans (§ 38)	Determining how to receive payments from plans, creating and contributing to plans, making investments, and making decisions regarding assets
Taxes (§ 39)	Preparing and filing income, gift, payroll, and other taxes; paying taxes and claiming refunds; receiving confidential information from taxing authorities; and acting for the principal in all matters before taxing authorities
Gifts (§ 40)	Making gifts with consideration of certain federal tax consequences and consistent with the principal's objectives if known or as the agent determines are in the principal's best interest based on certain factors

§§ 21-23 & 43-44 — OTHER PROVISIONS

Under the bill:

1. the principles of law and equity supplement the bill's provisions (§ 21),
2. the bill's provisions do not supersede other laws regarding financial institutions and entities and the other laws control if they are inconsistent with the bill (§ 22), and
3. the bill's remedies do not limit other rights and remedies under state law (§ 23).

In applying and construing the bill's provisions, consideration must be given to the need to promote uniformity with respect to its subject matter among states that have enacted the uniform provisions (§ 43).

The bill provides that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (E-SIGN). But the bill does not (1) modify, limit, or supersede E-SIGN's provisions on consumer disclosures (such as when consumers are considered to have consented to electronic disclosures) or (2) authorize electronic delivery of specified notices that are not subject to E-SIGN (§ 44). The bill does not specify how it relates to the Connecticut Uniform Electronic Transactions Act (CUETA) (CGS §§ 1-266 to -286), which also validates the use of electronic records and signatures.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 1 (04/02/2014)